

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 08-13555

In the Matter of:

LEHMAN BROTHERS HOLDINGS INC.,

Debtor.

U.S. Bankruptcy Court

## One Bowling Green

New York, New York

March 31, 2009

10:07 a.m.

## B E F O R E:

HON. JAMES M. PECK

U.S. BANKRUPTCY JUDGE

1 MOTION Filed by the Debtor for Authorization to Invest Capital  
2 and to Perform Certain Related Actions To Support the Capital  
3 Level of Lehman Brothers Bank

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24 Transcribed By: Esther Accardi

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P R O C E E D I N G S

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THE COURT: Lehman Brothers.

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MR. PEREZ: Good morning, Your Honor. Alfredo Perez.

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Your Honor, we took your admonition last time and we tried to get as much time on this as we could. Unfortunately, we weren't quite as successful in getting full notice.

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I do believe that we are at the very end of our need to intervene with the banks. We'll probably be here at least one time more. I'm not promising it, but that's our present intention to be here one time more.

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As the Court is aware, the situation with the banks literally changes on a daily basis, depending on payments, the market, and things like that. And there's a call report that is calculated, it's not due today but it's calculated as of today and we need to, basically, establish what our capital is as of today.

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When we filed the motion -- and, of course, Your Honor, the whole goal has been to try to get these banks up so that they're in the well-capitalized range, that we don't have the issues that we've been having. And the bank and LBHI, Mr. Lambert, have been quite successful. We've reduced the unfunded commitments from approximately eleven and a half billion to about five billion. Each billion of funded commitment that gets reduced as about eighty million dollars capital to the bank. So that's very significant and that's

1 part of our motion today, we want to basically do away with  
2 about another billion-three of commitments.

3 In addition, Your Honor, after the Court's ruling,  
4 which I believe was on the 13th, a draw request was made on --  
5 I think it was that Monday or Monday night. It was funded on  
6 Tuesday. There were two draw requests which were subsequently  
7 repaid. So under the REPO there's nothing outstanding, but it  
8 was used as indicated here, unfortunately, but it was used. So  
9 it was not for naught.

10 Your Honor, since the time that we filed the motion,  
11 I'm actually happy to report that we're not flirting with the  
12 eight percent, we're flirting with the ten percent, which would  
13 allow us possibly the opportunity to really significantly  
14 reduce our funding costs. It's not a given, but we made the  
15 determination that we really needed to go forward to see if we  
16 would not have to depend on the REPO but actually access the  
17 market. We don't know yet, obviously this is all subject to  
18 the OTS approval. We just want to make sure that when we put  
19 in our report as of today, that we're in the well capitalized  
20 range.

21 So the relief, Your Honor, really consists of about  
22 four different things. One is doing away with the loan  
23 commitments, which we're going to do regardless. Second is  
24 compromising the claim with respect to about six or seven  
25 million dollars of servicing revenues that are in dispute as

1       between Aurora and LBHI. Third, is a cash contribution I  
2       believe up to about fifteen million dollars. And the fourth is  
3       the contribution of servicing rights. Obviously, we're going  
4       to be working with the committee to determine the  
5       appropriate -- the actual appropriate funding. We're asking  
6       for authority to be allowed to do all of those four things. It  
7       may be that we don't have to do all of those four things. But  
8       it's just a situation where we're really not in a position, as  
9       of -- you know, 10:15 on the 31st, to be able to tell you  
10      exactly what it is that we want.

11           We think this is a very prudent exercise of our  
12      business judgment. And I am hopeful, and I don't say this -- I  
13      say this very cautiously because I don't want to come back here  
14      eating my words, but I do think that we've started to turn the  
15      corner here. And from the situation that Mr. Marsal presented  
16      a month and a half ago.

17           THE COURT: I understand you're looking for  
18      flexibility.

19           MR. PEREZ: Yes.

20           THE COURT: And I'm prepared to give it to you unless  
21      there's an objection from the committee concerning the laundry  
22      list of options that you've outlined.

23           MR. PEREZ: Mr. Lambert is here. I have a proffer --  
24      basically, I've gone through his proffer, that's what he would  
25      be prepared to proffer.

1 THE COURT: Well, I'll take the proffer but I want to  
2 hear from the committee.

3 MR. O'DONNELL: Your Honor, Dennis O'Donnell, Milbank  
4 Tweed Hadley & McCloy on behalf of the committee.

5 Your Honor, the committee does not object to the  
6 relief requested in this motion. We, like the debtors, realize  
7 that this is a process that has proceeded painfully to some  
8 extent, and slowly. But we think is moving in the right  
9 direction. Based on everything we know at the moment, we're  
10 equally optimistic that the relief requested under this motion  
11 and other developments with respect to the banks, we are headed  
12 in the right direction.

13 THE COURT: And one of the things that the committee  
14 knows that I don't know is the release fee associated with the  
15 commitments. And I take it you're satisfied as to that?

16 MR. O'DONNELL: Yes, Your Honor, we're satisfied that  
17 the level of that fee is more than appropriate given the relief  
18 provided to the debtors as a result.

19 THE COURT: That's fine. I've noted there is a  
20 footnote that volunteers to advise the Court as to the amount  
21 of that, and I'm going to take Mr. Perez up on that offer. I'm  
22 not conditioning the entry of an order or relief on knowing it.  
23 But at the close of today's hearing, and we have one other  
24 matter on this morning's calendar, I'm going to propose that we  
25 have a very brief chambers conference, simply for purposes of

1 alerting me to what we're talking about. I'm uncomfortable  
2 entering the order without knowing all the relevant facts. And  
3 I'm assuming that there's no problem in sharing that with me.

4 MR. PEREZ: Absolutely not, Your Honor.

5 MR. O'DONNELL: Thank you, Your Honor.

6 THE COURT: Okay. You want to proceed with the  
7 proffer?

8 MR. PEREZ: Yes, Your Honor. I would call Mr. Doug  
9 Lambert, Your Honor. Mr. Lambert has testified and I would  
10 incorporate his testimony from the prior hearing.

11 If called to testify, he would indicate that at the  
12 time we filed the motion, approximately eight days ago, the  
13 bank had expected to be below the eight percent capital  
14 adequacy level, and therefore required a capital investment in  
15 order to support its activities. And nevertheless, the goal of  
16 the proposed action and the reduction in the loan  
17 commitments -- in terminating the loan commitments, has always  
18 been to reduce the capital requirements so that the banks would  
19 otherwise achieve the well capitalized status, which is the ten  
20 percent status, Your Honor.

21 Since the filing of the motion, the bank has  
22 continued to prepare the March 31st thrift financial report,  
23 which I call the call report. And now believes that, although,  
24 just barely it may be able to achieve that capital requirement  
25 without significant additional capital as of this day with the

1 taking the actions that have been contemplating.

2 That this date remains an important date for the  
3 long-term goal of the bank, as explained in the motion. And  
4 that subject to the creditors' committee consent, they be  
5 authorized in addition to reduction of the loan commitment, to  
6 put in additional capital in order to achieve the ten percent  
7 risk based capital ratio level, which may allow the bank to  
8 access other forums of credit support to allow it to maintain  
9 it's long-term business objectives.

10 Mr. Lambert would testify that in connection with the  
11 specifics of the transaction that LBHI has identified a  
12 portfolio of mortgage servicing rights approximately --  
13 encompassing approximately 115,000 loans that have a principal  
14 balance of twenty-six billion dollars. That there was an  
15 independent appraisal done on February 28. And that those  
16 mortgaging servicing rights were appraised at 140 million  
17 dollars. And that depending on the need for capital, pursuant  
18 to one or more assignment agreements, LBHI would transfer  
19 ownership of those mortgage servicing rights to the bank as a  
20 capital contribution, to the extent that it determines that  
21 those are needed.

22 That with respect to the settlement agreement with  
23 Aurora, that there is a dispute with Aurora with respect to the  
24 March 2009 excess servicing fees, which total approximately six  
25 to seven million dollars. And that similar to the transaction

1 that was done previously that it will, in essence, forego those  
2 fees thereby increasing the capital by that amount. This is  
3 similar to the capital restoration motion that was consummated  
4 on February 27, 2009.

5                   Similarly, Mr. Lambert would testify, that the  
6 reduction in the 1.37 billion of unfunded commitments will  
7 result in significantly increase in the capital level by that  
8 reduction.

9                   And that, lastly, to the extent necessary, LBHI would  
10 contribute up to fifteen million dollars of cash if they -- if  
11 it's needed to maintain that well capitalized status.

12                   With respect to the business judgment, Your Honor,  
13 Mr. Lambert would testify that the decision to invest in the  
14 banks is done in an effort to preserve the opportunity for the  
15 debtors to realize the value of this bank as opposed to the  
16 value of the sister bank, Woodlands Bank in Utah, or what's  
17 referred to as the Utah Bank. And that based on the advice of,  
18 both financial professionals and business professionals, that  
19 they believe that this is in the best interests, and that the  
20 costs associated with the capital infusion in the settlement  
21 and the contribution outweigh the potential negative effect of  
22 not doing this.

23                   Additionally, Mr. Lambert would testify, that  
24 beginning in February LBHI has continued to support the banks  
25 including by the first contribution, which consisted of

1 approximately 200 million dollars in value, of which six or  
2 seven million was cash and the other one was mortgage servicing  
3 rights.

4 In addition, on March 13 he would testify that the  
5 Court authorized a temporary liquidity REPO facility which has  
6 been used twice, and has subsequently been repaid.

7 As it relates to the settlement agreement and the  
8 factors involving settlement and 9019, Mr. Lambert would  
9 testify that he believes that the settlement, that there is a  
10 dispute as to the excess servicing fees, and that the  
11 settlement is fair and reasonable and the best interest to the  
12 estate in addition to helping the capital position of the bank.

13 Additionally, Mr. Lambert would testify that there's  
14 been constant communication with the creditors' committee and  
15 that they've been informed of our intended actions throughout  
16 this case.

17 And we would request that you would enter the order.

18 THE COURT: All right. Is there anyone who wishes to  
19 cross examine Mr. Lambert with respect to the proffer as to his  
20 testimony?

21 There's no request for cross examination, I accept  
22 the proffer.

23 MR. PEREZ: Thank you, Your Honor.

24 THE COURT: I have one question, however, of counsel.  
25 Which is whether or not any of the measures being proposed

1 today have been cleared in advance with the Office of  
2 Supervision? And whether or not the debtor's in a position to  
3 make any representations as to the likelihood of getting  
4 whatever approvals are necessary from OTS?

5 MR. PEREZ: Your Honor, my experience in this case is  
6 that the OTS usually grants us the relief requested after the  
7 Court rules, unfortunately. We certainly have had extensive  
8 discussions with them. We do have a plan with them. They know  
9 that we're in Court today seeking this, they understand that.  
10 Whether we have actual approval --

11 UNIDENTIFIED SPEAKER: It's not committed but it's  
12 like we did.

13 MR. PEREZ: I think we expect to get approval but we  
14 don't have a letter that actually authorizes it today. To  
15 date, Your Honor, we've been fortunate that everything that  
16 we've requested has been approved.

17 THE COURT: Fine. Does anyone have any comment with  
18 respect to the requested relief? Hearing none, I'm prepared to  
19 approve it. And we'll enter an order today.

20 MR. PEREZ: Your Honor, there is, because of the fact  
21 that the facts changed a little bit since the time that we  
22 filed the motion, we did make some changes to the order to  
23 allow us to make the capital contribution basically at our  
24 discretion with the creditors' committee consent, to be able to  
25 get to the well capitalized level.

1 I have a form of redline if the Court --

2 THE COURT: That's fine. Do you also have a disk  
3 that reflects the changes?

4 MR. PEREZ: I do, Your Honor. I do. But I didn't  
5 want to give it to the Court without --

6 THE COURT: You may approach and hand that up. And  
7 if you can just stick around to the end of the calendar so that  
8 we can have a brief chambers conference to fill in the blanks  
9 on the fee aspect of this.

10 MR. PEREZ: Yes, Your Honor.

11 THE COURT: Okay. Thank you very much.

12 (Proceedings concluded at 10:22 a.m.)

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7 and to Perform Certain Related Actions To  
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9 Bank Approved

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2 C E R T I F I C A T I O N

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4 I, Esther Accardi, certify that the foregoing transcript is a  
5 true and accurate record of the proceedings.

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